IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 288 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

AJIZ HUSEN SUMARA

Appearance:

1. Criminal Appeal No. 288 of 1993

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Appellant.

MR CH VORA for Respondents

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 08/07/2004

ORAL JUDGEMENT

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973, is directed against

judgment dated December 1, 1992, rendered by the learned Judicial Magistrate, First Class, Nakhatrana-Kutch, in Criminal Case No.2871 of 1992, by which the respondents are acquitted of the offences punishable under Sections 323, 504, 114, 498A & 506(2) of the Indian Penal Code, as original complainant i.e. Aminabai Ajit had compounded the offences punishable under Sections 323, 504 & 114 I.P.C.; whereas offences punishable under Sections 498A & 506(2) I.P.C. were compounded by her with the permission of the learned J.M.F.C. before whom the prosecution was pending.

2. Aminabai Ajit, who was resident of village Virani Moti, Taluka : Nakhatrana, District : Kutch, had filed complaint in the Court of learned J.M.F.C. Nakhatrana against the respondents, and in view of the averments made therein, she had prayed the Court to convict the respondents of the offences punishable under Sections 323, 504, 114, 498A, 506(2) I.P.C. and punish them suitably.

3. The learned Magistrate had directed investigation under Section 156(3) of the Code of Criminal Procedure by an order dated August 25, 1992. The investigating officer had investigated the complaint filed by Aminabai Ajit and submitted chargesheet against the respondents. On submission of the chargesheet, Criminal Case No.2871 of 1992 was registered against the respondents.

4. During the pendency of criminal case, Aminabai Ajit and the respondents had submitted a purshis dated December 1, 1992 stating, inter alia, that the parties to the case had arrived at an amicable compromise in respect of offences punishable under Sections 323, 504 read with Section 114 I.P.C. and, therefore, appropriate orders be passed. The learned Magistrate had read over and explained to all the parties the compromise presented by parties to the proceedings which was admitted by them. It was noticed by the learned Magistrate that offences punishable under Sections 323, 504 read with Section 114 I.P.C. were compoundable in view of the provisions of Section 320(1) of the Code of Criminal Procedure, 1973, without permission of the Court, by the person (i) to whom hurt was caused, and (ii) who was insulted and who was intimidated. Under the circumstances, the Court had permitted original complainant Aminabai Ajit to compound the offences and acquitted the respondents of the offences punishable under Sections 323, 504 r.w.Sec.114 I.P.C. by an order dated December 1, 1992.

5. The parties to the proceedings pending before the

learned Magistrate had also submitted another compromise purshis on December 1, 1992 stating, inter alia, that the complainant was the wife of the respondent No.1; whereas respondent Nos.2 & 3 were her brothers-in-law and respondent No.4 was her sister-in-law, and as the complainant had compromised the disputes with a view to leading a happy married life and was happily living with the respondent No.1 as his wife, appropriate orders should be passed regarding prosecution launched by her against the respondents relating to commission of offences punishable under Sections 498A & 506(2) I.P.C.

6. The learned Magistrate had read over the compromise purshis to the original complainant and the accused individually and all had agreed to the same. In view of special facts of the case, permission to compound the offences were granted and the respondents were acquitted of the offences punishable under Sections 498A & 506(2) I.P.C. by another order dated December 1, 1992.

7. The case of the State of Gujarat is that the learned Magistrate had no jurisdiction to pass an order permitting the original complainant to compound offence punishable under Section 498A I.P.C. and, therefore, the order acquitting the respondents of the offence punishable under Section 498A I.P.C. should be set aside. Therefore, State Government has filed instant appeal.

8. This Court has heard Mr.N.D.Gohil, learned A.P.P. appearing for the State Government and Mr.C.H.Vora, learned counsel of the respondents. The order dated December 1, 1992 acquitting the respondents of the offences punishable under Sections 323, 504 r.w.Sec.114 I.P.C. is not subject matter of challenge in instant appeal. What is claimed by the appellant is that offence punishable under Section 498A I.P.C. is not compoundable even with the permission of the Court and, therefore, another order dated December 1, 1992 acquitting the respondents of the offences punishable under Sections 498A & 506(2) I.P.C. should be set aside. There is no manner of doubt that if an offence is such which cannot be compounded even with the permission of the Court, permission to compound the said offence granted by the Court will have to be regarded as invalid. Therefore, the second order dated December 1, 1992 by which the respondents were acquitted of the offences punishable under Sections 498A & 506(2) I.P.C. is liable to be set aside. However, the learned counsel of the respondents has stated at the Bar that the respondent No.1 and original complainant i.e. Aminabai Ajit are residing as

husband and wife happily since the date of the impugned order i.e. December 1, 1992 and as the parties have settled their disputes outside the Court before 12 years, this Court should not interfere with the said order. Strictly speaking, the order impugned in the appeal cannot be regarded as one passed in accordance with law and normally should be set aside. However, it is relevant to notice decision of the Supreme Court rendered in B.S.Joshi and others v. State of Haryana and another, (2003)4 SCC 675. In the said case, appellant No.4 was the husband of respondent No.2. Their marriage had taken place in the year 1999. They were living separately since July, 2000. The appellant Nos.1, 2 & 3 were close relatives of appellant No.4. F.I.R. was registered under Sections 498A, 323 & 406 I.P.C. at Police Station Central Faridabad at the instance of the respondent No.2 i.e. wife. Subsequently, respondent No.2-wife had filed an affidavit mentioning that First Information Report was registered at her instance due to temperamental differences and implied imputations. It was further stated in the said affidavit that her disputes with the appellants had been finally settled and she and the appellant No.4 had agreed for mutual divorce, and on filing of petition for mutual divorce, their statements were also recorded. By filing affidavit, respondent No.2 had prayed to quash the F.I.R. This was, however, seriously opposed by the State. The High Court had dismissed the petition filed by the appellants seeking quashing of the F.I.R. holding that the offences punishable under Sections 498A & 406 I.P.C. were not compoundable and that the inherent powers under Section 482 of the Code could not have been invoked to bypass the mandatory provision of Section 320 of the Code. Thereupon the appellants had invoked jurisdiction of the Supreme Court by way of Special Leave Petition. After granting leave, the Supreme Court has allowed the appeal and quashed criminal proceedings pending against the appellants by making following pertinent observations :

> "14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood

that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

9. The above-quoted observations make it evident that matrimonial disputes/offences can be compromised and duty of the Court is to encourage genuine settlements of matrimonial disputes. Applying the principles laid down by the Supreme Court in the decision quoted above to the facts of the present case, this Court finds that on the basis of two compromise purshises dated December 1, 1992, the respondents would be justified in invoking the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, 1973 for quashment of complaint lodged by Aminabai Ajit and if such an application is filed, in all probability, the same would be allowed in view of weighty observations made by the Supreme Court in B.S.Joshi and others (supra). However, before any application which may be submitted under Section 482 of the Code is entertained, the Court will have to set aside the impugned order and then ask the respondent to invoke jurisdiction of the High Court under Section 482 of the Code, which would cause unnecessary harassment to the respondent and may strain relations between respondent No.1 and his wife, who was original complainant. Such a course is, therefore, not warranted in the facts of the case and having regard to the facts of the case, the Court should refuse to interfere with the order of acquittal while exercising powers under Section 386 of the Code of Criminal Procedure, 1973, though the said order is not found to be in accordance with law. The two compromise purshises which were submitted before the learned Magistrate would indicate that the parties had settled the disputes amongst themselves and the original complainant was residing with the respondent No.1 as his wife. This Court has no reason to disbelieve the statement made at the Bar by the learned counsel of the respondents that since the date of order, original complainant Aminaben Ajit and the respondent No.1 are happily residing as husband and wife and that as on today no disputes are subsisting between them. There is no manner of doubt that the impugned

order has a mere technical flaw. Powers under Section 386 of the Code of Criminal Procedure, 1973 need not be exercised to rectify technical errors so as to jeopardise happy married life of the parties. Such a course is permissible in view of legislative intent which is quite evident from the provisions of Section 386 of the Code of Criminal Procedure, 1973. Under the circumstances, this Court refuses to interfere with the impugned order of acquittal.

For the foregoing reasons, the appeal fails and is dismissed.

(J.M.Panchal,J.)

(patel)